

# HONIGMAN

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*Via FedEx*

September 25, 2006

Office of General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

1 2006 SEP 26 A 10:17

**Re: Complaint Under Federal Election Campaign Laws**

**MUR # 5823**

Dear Sir/Madam:

Accompanying this letter is an original and three copies of a Complaint alleging violations of the Federal Election Campaign Laws and regulations of the Federal Election Commission promulgated pursuant thereto. The Complaint is filed against Club for Growth, Inc., Club for Growth, Inc., PAC, and Walberg for Congress.

If you have any questions or require additional information, please feel free to contact me.

Very truly yours,

HONIGMAN MILLER SCHWARTZ AND COHN LLP



John D. Pirich

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**BEFORE THE FEDERAL ELECTION COMMISSION**

IN THE MATTER OF:

CLUB FOR GROWTH, INC.,  
2001 L Street N.W., Suite 600  
Washington, D.C. 20036

CLUB FOR GROWTH, INC., PAC  
2001 L Street N.W., Suite 600  
Washington, D C., 20036

WALBERG FOR CONGRESS  
6769 Teachout Road  
Tipton, MI 49287

MUR 5823

**COMPLAINT**

NOW COMES Schwarz for Congress (Committee ID C00395822), P. O. Box 2063, Battle Creek, Michigan, 49016, and hereby files this Complaint pursuant to 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.4, stating as follows:

**THE RESPONDENTS**

1. The Club for Growth, Inc., ("CFG") is a Virginia corporation, registered with Internal Revenue Service ("IRS") as a political organization under Section 527 of the Internal Revenue Code. CFG's principal place of business is 2001 L. Street N.W., Suite 600, Washington, D.C., 20036.

2. The Club for Growth, Inc., PAC ("CFG-PAC") (Committee ID C00346536) is a non-party multi-candidate political action committee organized under 2 U.S.C. § 441(A)(4). It

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maintains its principal office at the offices of CFG, 2001 L Street N.W., Suite 600, Washington, D.C , 20036.

3 Walberg for Congress (Committee ID C00390724) is a candidate committee of Timothy Walberg, who defeated Congressman Schwarz in Michigan's 2006 Republican primary election for representative in Congress from the 7<sup>th</sup> Congressional District of Michigan. The address for Walberg for Congress is 6769 Teachout Road, Tipton, Michigan 49287.

### BACKGROUND FACTS

4. CFG has solicited, received, and spent millions of dollars in each of the 2000, 2002, 2004 and 2006 election cycles to support specific candidates for federal office. Indeed, Tim Walberg, was identified by CFG in its solicitation materials for contributions as one of the candidates it sought to elect in 2006. The CFG, in violation of the Federal Election Campaign Act, 2 U.S.C. § 431, *et seq.* ("the Act") has never registered as a political committee ("PAC") or reported its receipts and disbursements as required of PACs under the Act.

5. On information and belief, including publicly available materials filed in the lawsuit of *Federal Election Commission v Club for Growth, Inc* , now pending in the United States District Court for the District of Columbia, Civil Action No. 05-1851 (RMU), CFG has accepted and encouraged contributions from persons that exceed \$5000 -- the maximum limit that may be contributed to a non-connected PAC by a single contributor under the Act. For instance, CFG reported receiving a contribution of \$500,000 from Virginia Manheimer on March 16, 2006. (Source: CFG IRS Form 8872, filed April 20, 2006).

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6. Examination of CFG's website, [www.clubforgrowth.com](http://www.clubforgrowth.com), shows that it maintains photographs of, and promotional materials endorsing, selected federal candidates supported by CFG. On information and belief, these materials are prepared by the selected candidates or their agents. Although the CFG website states that the expenses of maintaining the photos and promotional material is paid for by CFG-PAC, CFG-PAC has not accounted for these expenses in its FEC reports as in-kind contributions. Among other specific candidates, the site contains a photograph of Mr. Walberg, and, at least prior to the primary election, Walberg campaign material. The only publicly available information uncovered with respect to the costs associated with the website are that they are paid for by CFG. (Source: Club for Growth, Inc., IRS Form 8872, filed April 1, 2006 -- payment on January 11, 2006 to PJ Doland Web Design for "website design and maintenance.")

7. According to the Michigan Campaign Finance Network in a report of August 4, 2006 appearing on its website, [www.mcfn.org](http://www.mcfn.org), 86% of Mr. Walberg's financial backing came directly or indirectly from CFG. Coordination occurred between CFG, CFG-PAC, and Walberg for Congress in dissemination of communications. Through the primary election on August 8, 2006, CFG-PAC paid for broadcast advertisements expressly advocating the election of Mr. Walberg and the defeat of Congressman Schwarz. These advertisements were disseminated throughout Michigan's Seventh Congressional District.

8. Going back to, at least, 2002, CFG and CFG-PAC have coordinated communications with candidates for federal office through interconnected vendors, namely Red Sea, LLC, Basswood Research, a wholly owned subsidiary of Red Sea, Jamestown Associates, and National Research, Inc.

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9. In 2002 Red Sea and Jamestown Associates worked together on the South Carolina gubernatorial race of Republican Mark Sanford. In 2004, Red Sea and Jamestown Associates worked together on the campaign of Republican Pat Toomey for the United States Senate from Pennsylvania. Matt Wahl, the media buyer for Red Sea during the Toomey campaign, was also buying media for CFG on behalf of Jamestown Associates for the same election. Mr. Toomey is now the President of CFG. Basswood Research, a subsidiary of Red Sea, provides survey research for CFG, and National Research, which has provided survey results to both Walberg for Congress and CFG is owned by Adam Geller, a former principal in Jamestown Research.

10. Past instances in which the same vendors were being used by a campaign committee and CFG/CFG-PAC to coordinate efforts include:

A. The 2006 Congressional Campaign of Sharron Angle in Nevada's Second Congressional District in which both Angle for Congress and CFG-PAC used Red Sea and Jamestown Associates to create advertising and make media buys.

B. The 2006 Senatorial Campaign of Steve Laffey to be elected Senator from Rhode Island, in which Laffey for Senate and CFG-PAC used Red Sea for advertising and media buys. In addition, both CFG and Laffey for Senate used Basswood Research, the Red Sea subsidiary, for polling.

11. Following the same pattern of the electoral races identified in paragraph 10, in the race between Congressman Schwarz and Mr. Walberg, Walberg for Congress used Jamestown Associates for advertising and media buys and CFG-PAC utilized Red Sea for advertising and media buys. At the same time, CFG and Walberg for Congress were both utilizing National

Research for polling. Through these interconnected common vendors, Walberg for Congress and CFG-PAC engaged in coordinated communications to influence voters in Michigan's Seventh Congressional District.

### **COUNT 1**

12. Schwarz for Congress incorporates, as if fully set forth herein, the preceding allegations of this Complaint.

13. In 2006, CFG received in excess of \$1,000 in contributions as defined in 2 U.S.C. § 431(8)(A) and made in excess of \$1,000 in expenditures as defined in 2 U.S.C. § 431(9)(A). In fact, CFG's principal reason for existing is to influence election of candidates to federal office. As such, CFG is a political committee or PAC within the meaning of 2 U.S.C. § 431(4)(A)

14. CFG has violated 2 U.S.C. § 433 by failing to register with the Federal Election Commission ("FEC") as a PAC.

### **COUNT 2**

15. Schwarz for Congress incorporates, as if fully set forth herein, the preceding allegations of this Complaint.

16. Under the Act, specifically 2 U.S.C. § 434, CFG was required, as a PAC, to file periodic reports of its receipts and disbursements with the FEC.

17. CFG has violated 2 U.S.C. § 434 by failing to file any of the required reports for the 2006 election cycle.

**COUNT 3**

18. Schwarz for Congress incorporates, as if fully set forth herein, the preceding allegations of this Complaint.

19. As a PAC within the meaning of 2 U.S.C. § 431(4)(A), CFG was prohibited from knowingly accepting contributions in excess of the \$5,000 limitation established by 2 U.S.C § 441(a)(1).

20. CFG, in violation of 2 U.S.C. § 441a(f) knowingly accepted contributions in excess of the applicable limit

**COUNT 4**

21 Schwarz for Congress incorporates, as if fully set forth herein, the preceding allegations of this Complaint.

22. CFG, as a corporation, is prohibited from making expenditures as defined in 2 U.S.C. § 431(9)(A) in connection with federal elections.

23. CFG did, in fact, make prohibited corporate expenditures in violation of 2 U.S.C. § 441b(q).

**COUNT 5**

24. Schwarz for Congress incorporates, as if fully set forth herein, the preceding allegations of this Complaint.

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25. Although CFG asserts on its website that campaign photos and campaign materials posted there are, in fact, paid for by CFG-PAC, CFG-PAC has not accounted for any such expenses as in-kind contributions to the federal candidates featured on the website.

26. If, in fact, CFG paid for all costs associated with the website, CFG made an illegal corporate contribution to those federal candidates featured on the website, including Mr. Walberg in violation of 2 U.S.C. § 441b(a).

27. In the alternative, if CFG-PAC paid the expenses to maintain campaign photos and campaign material on the CFG website, it has failed to report these expenses as in-kind contributions to the committees of the candidates featured on the site, including Mr. Walberg, in violation of 2 U.S.C § 434.

#### COUNT 6

28. Schwarz for Congress incorporates, as if fully set forth herein, the preceding allegations of this Complaint.

29. The CFG-PAC expenditures for communications on behalf of Mr. Walberg were coordinated with Walberg for Congress, through the use of interconnected vendors, and, thus, were “coordinated communications” under C.F.R. § 109 21, rather than “independent expenditures” of CFG-PAC as defined in 2 U.S.C. § 431(17).

30. CFG-PAC’s payment for coordinated communications in support of Mr. Walberg’s candidacy constituted an in-kind contribution under the Act, reportable by Walberg for Congress. 11 C.F.R. § 109 21(b).



31. By failing to report the expenditures for coordinated communications with the CFG-PAC as an in-kind contribution, Walberg for Congress failed to satisfy its reporting obligations under 2 U.S.C. § 434.

**COUNT 7**

32. Schwarz for Congress incorporates, as if fully set forth herein, the preceding allegations of this Complaint.

33. Walberg for Congress knew that it was limited to accepting \$5,000 in contributions from a multi-candidate political committee such as CFG-PAC.

34. Walberg for Congress knew that the CFG-PAC expenditures for coordinated communications vastly exceeded \$5,000 and, did not constitute independent expenditures within the meaning of the Act.

35. By accepting the expenditures from CFG-PAC for coordinated communications in excess of \$5,000, Walberg for Congress knew it was accepting an illegal contribution under 2 U.S.C. § 441a(f).

**COUNT 8**

36. Schwarz for Congress incorporates, as if fully set forth herein, the preceding allegations of this Complaint.

37. CFG-PAC failed to report the expenditures for coordinated communications with Walberg for Congress as contributions to that committee, thereby failing to satisfy CFG-PAC's reporting obligations under 2 U.S.C. § 434.

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**COUNT 9**

38. Schwarz for Congress incorporates, as if fully set forth herein, the preceding allegations of this Complaint.

39. CFG-PAC expended vastly in excess of \$5,000 for coordinated communications with Walberg for Congress within the meaning of 11 C.F.R. § 109.21.

40. CFG-PAC knew that, as a multi-candidate PAC, it was prohibited from contributing in excess of \$5,000 to Walberg for Congress.

41. CFG-PAC knew that its expenditures for coordinated communications did not qualify as independent expenditures as defined in 2 U.S.C. § 431(17).

42. CFG-PAC knowingly made expenditures vastly in excess of \$5,000 in support of Walberg for congress in violation of 2 U.S.C. § 441a(f).

**REQUEST FOR RELIEF**

But for the illegal activity described in this complaint, Congressman Schwartz would undoubtedly have been successful in his primary re-election against Mr. Walberg. Based on the foregoing, Schwarz for Congress respectfully requests that the FEC commence an investigation of the allegations set forth in this Complaint, and, ultimately, assess appropriate penalties for the following illegal conduct:

A. As to the Club for Growth, Inc.: (i) violation of 2 U.S.C § 433 by failing to register as a PAC; (ii) violation of 2 U.S.C. § 434 by failing to file periodic reports of receipts and disbursements in connection with the 2006 election cycle; (iii) violation of 2 U.S.C.

§ 441a(f) by knowingly accepting contributions that exceed the statutory maximum set forth in the Act; and (iv) violation of 2 U.S.C. § 441b, by making prohibited corporate expenditures.

B. As to Walberg for Congress: (i) violation of 2 U.S. C. § 434 by failing to report as in-kind contributions the amount expended by the CFG-PAC on coordinated communications with Walberg for Congress and (ii) violation of 2 U.S.C § 441a(f) by knowingly accepting contributions in excess of \$5,000 from CFG-PAC.

C. As to the Club for Growth PAC: (i) violation of 2 U.S.C. § 434 by failing to report its expenditures for coordinated communications with Walberg for Congress as contributions to Walberg for Congress, (ii) violation of 2 U.S.C § 434 by failing to report as in-kind contributions the amount expended in connection with the maintenance of campaign photos and campaign literature on the CFG site if, in fact, CFG-PAC paid such expenses; and (iii) violation of 2 U.S.C. § 441a(f) by knowingly making expenditures in support of Walberg for Congress that exceed \$5,000

D. Schwarz for Congress also respectfully requests that the FEC ultimately commence a civil action against Club for Growth, Inc., Club for Growth PAC and Walberg for Congress, enjoining them from engaging in future conduct that violates the Act in the manner described herein

The above statements are true and accurate to the best of my knowledge, information and belief

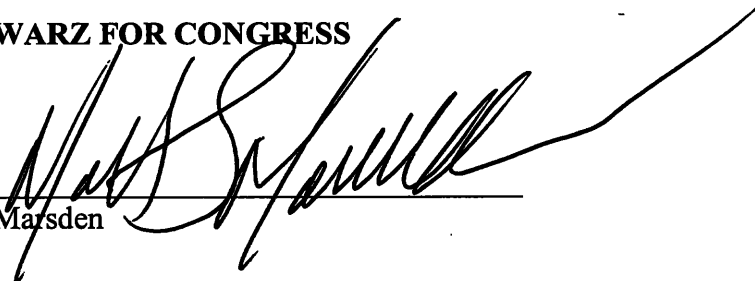
Respectfully submitted,

**SCHWARZ FOR CONGRESS**

Dated: September 25, 2006

By: \_\_\_\_\_

Matt Marsden



STATE OF MICHIGAN

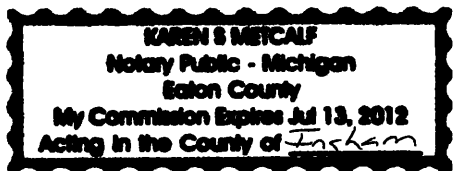
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) ss.

COUNTY OF INGHAM

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Signed and sworn to before me by Matt Marsden on this 25th day of September 2006.



Karen S Metcalf, Notary Public  
Eaton County, Michigan  
My commission expires. 7-13-2012  
Acting in Ingham County, Michigan

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